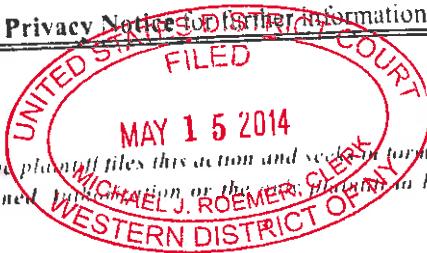


Rev 1-25-06 WDNY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

14 CV 6251W
**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983**
(Prisoner Complaint Form)

All material filed in this Court is now available via the **INTERNET**. See **Pro Se Privacy Notice** for further information.



1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: **NOTE:** If more than one plaintiff files this action and seeks *in forma pauperis* status, each plaintiff must submit an *in forma pauperis* application and a signed *declaration or the court* to be considered will be the plaintiff who filed an application and authorization

1. MISAELO MONTALVO 131327

2. -VS-

B. Full Name(s) of Defendant(s): **NOTE:** Pursuant to Fed R Civ P 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. COMMISIO NER OF CORRECTIONAL FACILITY 4. SHERIFF MARK WHIPPEMAN
2. COMM. WRC. F. SULLIVAN 5. SUPER. T. DIINA
3. SHERIFF T. HOWARD 6. FIRST D. S. M. REARDON

* PLEASE SEE ATTACHED PAGE

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1333(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION: *NOTE: To list additional plaintiffs, use this format on another sheet of paper*

Name and Prisoner Number of Plaintiff: MISAELO MONTALVO 131327

Present Place of Confinement & Address: ECHC 410 DELAWARE AV.

BUFFALO NY 14202

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

CAPTION

1. PLAINTIFF MONTALVO vs.

7. CHIEF HARRIS
8. CAPT. HARTMAN
9. SGT. USINSKI
10. SGT. KOPPEL
11. SGT. DIMOND
12. SGT. McANDREW
13. SGT. JOHN DOE
14. DEP. SHERIFF JOHN DOE
15. DEP. SHERIFF BROWN
16. DEP. SHERIFF HARVEY
17. NURSE PRACTITIONER SHARON
18. NURSE PRACTITIONER JANET
19. COUNTY OF ERIE
20. KEEFE KIOSK ENTITY
21. THOMAS REUTER
22. THOMAS J. LOUGHREN

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this form or another sheet of paper.

Name of Defendant: THOMAS J. LOUGHREN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in Individual and/or Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

(SLB) 485-2346

Name of Defendant: FREDERICK LAMY

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in Individual and/or Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

Name of Defendant: FRANCIS SULLIVAN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in Individual and/or Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
 Yes No

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other actions) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ____ No ____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted:

By court for failure to exhaust administrative remedies:

By court for failure to prosecute, pay filing fee or otherwise respond to a court order:

By court due to your voluntary withdrawal of claim:

Judgment upon motion or after trial entered for

plaintiff

defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ____ No ____

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ____ No ____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

By court for failure to exhaust administrative remedies;

By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

plaintiff

defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

• Religion	• Access to the Courts	• Search & Seizure
• Free Speech	• False Arrest	• Malicious Prosecution
• Due Process	• Excessive Force	• Denial of Medical Treatment
• Equal Protection	• Failure to Protect	• Right to Counsel

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) PLEASE SEE ATTACHED PAGES, defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes _____ No _____ If yes, what was the result? DENIED

Did you appeal that decision? Yes _____ No _____ If yes, what was the result? DENIED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) PLEASE ATTACHED PAGES, defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? Yes _____ No _____ If yes, what was the result? DENIED

Did you appeal that decision? Yes _____ No _____ If yes, what was the result? DENIED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

PLEASE SEE ATTACHED PAGES

Do you want a jury trial? Yes No _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 2, 2014
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

Signature(s) of Plaintiff(s)

PRELIMINARY STATEMENT:

1. THIS IS A CIVIL ACTION SEEKING RELIEF AND/OR DAMAGES TO DEFEND AND PROTECT THE RIGHTS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES. THIS ACTION IS BROUGHT PURSUANT TO 42 U.S.C. § 1983. THE COURT HAS JURISDICTION OVER THE ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1343 (3) and (4), and 2201.
2. THE PLAINTIFF IS A CITIZEN OF THE UNITED STATES AND A RESIDENT OF NEW YORK STATE. THE PLAINTIFF, MISAEL MONTALVO, IS CURRENTLY INCARCERATED AT THE BRICE COUNTY HOLDING CENTER (ECHC). PLAINTIFF, MISAEL MONTALVO, IS A DISABLED PERSON WHO SINCE THE AGE OF FIFTEEN SUFFERS FROM DIABETES AND MUST RECEIVE MEDICAL TREATMENT FOR HIS DISABILITY ON A DAILY BASIS.
3. THE PLAINTIFF SEEKS TO FURTHER ENFORCE THE JURISDICTION OF THIS COURT PURSUANT TO 42 USCA 1983 TITLE II OF THE AMERICANS WITH DISABILITIES ACT, OF 1990, SUBSECTION 504 OF THE REHABILITATION ACT OF 1973, 42 USCA 12132, 42 USCA (21.31), 29 USCA 794, 28 CFR, 35.105 AND FOR VIOLATIONS OF THE PLAINTIFFS RIGHTS UNDER THE UNITED STATES FIRST, EIGHTH AND

FOURTEENTH CONSTITUTIONAL AMENDMENTS.

4. THE GRAVEMENT OF THIS COMPLAINT IMMEDIATELY CONCERNS THE DISCRIMINATORY CUSTOM, POLICIES AND PRACTICES WHICH HAVE EXCLUDED THE PLAINTIFF FROM FULL PARTICIPATION IN THE KEEFE KIOSK COMMISSARY PROGRAM.

5. ECHC IS A PUBLIC ENTITY SUPERVISED AND MANAGED BY THE SHERIFFS OFFICE WHICH IS ALSO A PUBLIC ENTITY AND AS SUCH THE SHERIFFS OFFICE AND THE ECHC HAS CONTRACTED THE KEEFE KIOSK COMPANY WHICH IS A SEPARATE ENTITY TO MANAGE THE COMMISSARY PROGRAM WITHIN THE ECHC. WHEREFOR, THE SHERIFFS OFFICE, ECHC AND KEEFE KIOSK ENTITIES ARE MANDATED TO COMPLY WITH TITLE II OF THE ADA WHICH STATES, "PUBLIC ENTITY" SECTION, PROVIDES THAT "NO QUALIFIED INDIVIDUAL WITH A DISABILITY SHALL, BY REASON OF SUCH DISABILITY, BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY, OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY"⁶⁶⁹. SECTION 504 OF THE REHABILITATION

ACT PROVIDES THAT "IN OTHERWISE
QUALIFIED INDIVIDUAL WITH A
DISABILITY IN THE UNITED STATES, . . .

SHALL, SOLELY BY REASON OF HER OR
HIS DISABILITY, BE EXCLUDED FROM
THE PARTICIPATION IN, BE DENIED THE
BENEFITS OF, OR BE SUBJECT TO
DISCRIMINATION UNDER ANY PROGRAM
OR ACTIVITY RECEIVING FEDERAL
FINANCIAL ASSISTANCE OR UNDER ANY
PROGRAM OR ACTIVITY CONDUCTED BY
ANY EXECUTIVE AGENCY. . ." THIS MEANS
THAT ANY AGENCY - INCLUDING A
DEPARTMENT OF CORRECTIONS, SHERIFF'S
OFFICE, ETC. - THAT RECEIVES ANY
FEDERAL FUNDING IS COVERED BY THE
REHABILITATION ACT FOR ALL OF ITS
SERVICES, PROGRAMS AND ACTIVITIES.
FEDERAL AGENCIES AND PRISONS ARE
NOT SUBJECT TO THE ADA, BUT THEY
ARE SUBJECT TO THE REHABILITATION ACT.
DEPARTMENT OF JUSTICE REGULATIONS
PROMULGATED UNDER THE
STATUTES ARE APPLICABLE TO PRISONS
AND JAILS.

6. PLAINTIFF ALLEGES AMONG OTHER THINGS THAT
THE DEFENDANTS COMMISSIONERS OF CORRECTIONS

FREDERICK LAMY AND FRANCIS SULLIVAN, SHERIFF HOWARD, UNDERSHERIFF MARK WHIPPERMAN ET. AL, ARE POLICY MAKERS FOR THE SHERIFF'S OFFICE, CORRECTIONAL FACILITIES, JAILS AND FCHC AND AS SUCH THESE DEFENDANTS HAVE CREATED POLICIES IN THE JAIL MANAGEMENT DIVISION INMATE HANDBOOK THAT DELIBERATELY AND INTENTIONALLY DISCRIMINATE AGAINST THE PLAINTIFF WHO IS A DISABLED PERSON THAT SUFFERS FROM DIABETES AND IS ALLEGEDLY PRESCRIBED A SPECIAL DIET. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN ET. AL CREATED A POLICY OR CUSTOM UNDER WHICH UNCONSTITUTIONAL PRACTICES OCCURRED, OR ALLOWED THE CONTINUANCE OF SUCH A POLICY OR CUSTOM. THE DEFENDANTS WERE ALSO GROSSLY NEGLECTFUL IN SUPERVISING SUBORDINATES WHO COMMITTED THE WRONGFUL ACTS. THE DEFENDANTS EXHIBITED DELIBERATE INDIFFERENCE TO THE RIGHTS OF INMATES BY FAILING TO ACT ON INFORMATION INDICATING THAT UNCONSTITUTIONAL ACTS WERE OCCURRING.

7. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA ET.AL IMPLEMENTED AND ENFORCED A POLICY IN THE REVISED JAIL MANAGEMENT DIVISION INMATE HANDBOOK DATED JULY 2013 ON PAGE FOURTEEN "COMMISSARY ORDERING LEVELS" WHICH STATES "INMATES WITH DIETARY RESTRICTIONS WILL NOT BE ALLOWED TO ORDER ANY FOOD ITEMS ON COMMISSARY." PLAINTIFF WHO IS A DIABETIC AND ON A FRAUDULANT SPECIAL DIET HAS BEEN DISCRIMINATED AGAINST BY A POLICY THAT IS UNCONSTITUTIONAL WHICH EXCLUDES THE PLAINTIFF FROM RECEIVING THE BENEFITS FROM FOOD ITEMS BEING SOLD IN THE KEEFE KIOSK COMMISSARY PROGRAM. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA, KEEFE KIOSK ET.AL HAVE BEEN ARBITRARILY MADE THEIR POLICY MAKING AND HAVE FAILED TO MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST QUALIFIED INDIVIDUALS WITH A KNOWN DISABILITY. THESE DEFENDANTS HAVE REFUSED TO MODIFY SUCH UNCONSTITUTIONAL POLICIES THAT

BLATANTLY DISCRIMINATE AGAINST INMATES WHO SUFFER FROM DIABETES, AND MUST RELY ON AN ADEQUATE DIET MENU WHICH ALSO THE DEFENDANTS HAVE FAILED TO PROVIDE.

8. LAMY IS THE SUPERIOR OF SULLIVAN, SULLIVAN IS THE SUPERIOR OF HOWARD, HOWARD IS THE SUPERIOR OF WHIPPERMAN, WHIPPERMAN IS THE SUPERIOR OF DINA AND DINA IS CONTRACTED WITH KEEFE KIOSK WHICH HAVE ALL ACTED IN COLUSION TO DISCRIMINATE AGAINST THE PLAINTIFF BY EXCLUDING THE PLAINTIFF FROM PURCHASING NEARLY TWENTY SEVEN FOOD ITEMS IN COMMISSARY PROGRAM THAT ARE BENEFICIAL TO DIABETICS;

9. THE DEFENDANTS NURSE PRACTITIONER SHARON AND NURSE PRACTITIONER JANET HAVE SUBJECTED THE PLAINTIFF TO MEDICAL DECIBERATE INDIFFERENCE BECAUSE THE PLAINTIFF REQUIRED AN ADEQUATE DIET MENU TO STABILIZE HIS INSULIN LEVEL. HOWEVER, THE DEFENDANTS HAVE ALL

FAILED TO EMPLOY AN ADEQUATE DIETICIAN THAT WOULD IMPLEMENT A CONDUSIVE DIABETIC MENU. THE DEFENDANTS ARE ALL BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY.

10. THE DEFENDANTS LAMY, SULLIVAN ET. AL HAVE BEEN MALICIOUS IN THEIR OFFICIAL CAPACITY WHEN IMPLEMENTING POLICIES WHICH RECKLESSLY DISREGARD THE RIGHTS OF DISABLED PERSONS.

11. THE PLAINTIFF ASSERTS THAT THE DEFENDANTS HOWARD, WHIPPERMAN, DIINA, REARDON, CHEF HARRIS, CAPT. HARTMAN, GRIEVANCE COORDINATOR SGT. MCANDREW ET. AL HAVE ALL VIOLATED THE PLAINTIFF'S FIRST CONSTITUTIONAL AMENDMENT BY DEPRIVING THE PLAINTIFF FROM EXERCISING HIS RIGHT TO GRIEVE AND STONEWALLING THE PLAINTIFF FROM EXERCISING HIS DUE PROCESS RIGHTS.

12. THE DEFENDANTS LAMY, SULLIVAN, HOWARD, REA WHIPPERMAN, DIINA, REARDON, HARRIS, CAPT. HARTMAN, SGT. MCANDREW ET. AL ALL HAVE A CUSTOM POLICY IN PRACTICE

OF RETALIATING AGAINST INMATES WHO PETITION THE GOVERNMENT FOR REDRESS BY PLACING SUCH INMATES ON TRANSFERS AND FABRICATING ERRONEOUS ALLEGATIONS THAT ARE WHOLLY UNCONSTITUTIONAL

13. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DIINA, REARDON, CAPT. HARTMAN, SGT. MCANDREW, SGT. DIAMOND ET. AL HAVE ALL MALICIOUSLY AND SADISTICALLY ACTED WITH A CULPABLE STATE OF MIND TO DEPRIVE THE PLAINTIFF OF HIS RIGHTS UNDER THE UNITED STATES CONSTITUTION BY NOT PROVIDING THE PLAINTIFF WITH A SPANISH INTERPRETER WHICH PLAINTIFF DOES NOT SPEAK ENGLISH AND HAS BEEN SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT WHICH TANTAMOUNTS TO ATYPICAL AND SIGNIFICANT HARSHSHIP.

STATEMENT OF FACTS

14. THE PLAINTIFF WHO IS A DISABLED PERSON AND SUFFERS FROM DIABETES WHICH SUCH TERM IS DEFINED UNDER S.S. (A) OF TITLE II OF THE ADA AS A QUALIFIED INDIVIDUAL WITH A KNOWN DISABILITY. THE PLAINTIFF ON OR ABOUT NOV. 19 2011 WAS ARRESTED, TAKEN INTO CUSTODY AND DETAINED AT THE ECHC. THE PLAINTIFF IMMEDIATELY INFORMED JAIL OFFICIALS AND THE MEDICAL DEPARTMENT THAT HE DID NOT SPEAK ENGLISH AND NEEDED A SPANISH INTERPRETER. HOWEVER, SUCH REQUEST REMAIN TO NO AVAIL.

15. IN LIEU OF PLAINTIFF BEING A DIABETIC, THE DEFENDANTS NURSE PRACTITIONER SHARON AND JANET, AS OF NOV. 19th 2011 UP UNTIL THE CURRENT DATE OF MAY 1st 2014 HAS FAILED TO ENSURE THAT PLAINTIFF RECEIVED AN ADEQUATE DIABETIC DIET WHICH SUCH DELIBERATE INDIFERENCE OF MEDICAL CARE HAS PLACED THE PLAINTIFF AT THREAT OF SUFFERING IRREPARABLE HARM.

16. ALTHOUGH PLAINTIFF HAS REPEATEDLY REQUESTED FOR THE NURSE PRACTITIONER SHARON

TO PRESCRIBE AND ORDER FOR JAIL
OFFICIALS TO PROVIDE PLAINTIFF WITH
SNACKS DURING THE LONG PERIOD
HOURS OF 4:30 PM UNTIL APPROXIMATELY
9: AM WHICH IS THE DURATION THAT
PLAINTIFF IS LEFT WITHOUT EATING
AND THE PLAINTIFFS SUGAR LEVEL HAS
BOTTOMED OUT BUT THE DEFENDANT
NURSE PRACTITIONER SHARON HAS STATED
"NO WE DO NOT ISSUE PRISONERS SNACKS."

17. ON OR ABOUT FEB 16, 2013 PLAINTIFF
WAS CHARGED WITH ERRONEOUS
BEHAVIOR ALLEGATIONS. PLAINTIFF DUE
PROCESS WAS VIOLATED BY THE HEARING
OFFICER DEFENDANT JOHN DOE
CONDUCTED THE HEARING IN A
DISCRIMINATORY AND PREJUDICIAL MANNER
THAT WAS BIAS TO THE PLAINTIFF.
DEFENDANT HEARING OFFICER JOHN
DOE WHILE CONDUCTING THE HEARING
ON OR ABOUT FEB 20, 2013 DENIED
THE PLAINTIFF THE RIGHT TO HAVE
A SPANISH SPEAKING INTERPRETER,
THE RIGHT TO TIER HEARING ASSISTANCE,
THE RIGHT TO CALL WITNESSES, THE
RIGHT TO CONDUCT LEGAL RESEARCH AND
THE RIGHT TO A BILINGUAL INTERPRETOR

TO ASSIST PLAINTIFF WITH APPEAL PROCESS
(SEE EXHIBIT A)

18. THE DEFENDANT SGT. WINSKI CONSPIRED
WITH DEPUTY DEFENDANT JOHN DOE
BY NOT AFFORDING THE PLAINTIFF
WITH A WRITTEN DISCIPLINARY REPORT
SO THAT THE PLAINTIFF CAN HAVE
PROPER NOTICE OF HIS CHARGES,
THE DEFENDANT HEARING OFFICER
KOPPEL CONDUCTED THE HEARING
IN A MALICIOUS AND ARBITRARY
MANNER. DEFENDANT KOPPEL FAILED
TO REMAIN IMPARTIAL FACT FINDER
OF EVIDENCE AND ALSO PRECLUDED
THE PLAINTIFF FROM THE RIGHT TO
HAVE THE HEARING RECORDED.

19. THE DEFENDANT H.O. KOPPEL
SENTENCED THE PLAINTIFF 180 DAYS SHU.
WHICH SUCH SOLITARY CONFINEMENT
TANTAMOUNTED TO CRUEL AND UNUSUAL
PUNISHMENT AND ATYPICAL AND
INSIGNIFICANT HARSHSHIP BECAUSE
PLAINTIFF COULD NOT SPEAK ENGLISH
AND ACCESS TO LAW MATERIAL IN
SPANISH WAS DENIED, ACCESS TO LAW
LIBRARY DENIED. DUE TO NO TRANSLATOR
PLAINTIFF WAS DENIED THE RIGHT

TO CONDUCT LEGAL RESEARCH AND
ACCESS TO COURTS FROM FEB 20 2013
TO JULY 26 2013. THE PLAINTIFF
WHILE IN SOLITARY CONFINEMENT
WAS SUBJECTED TO MEDICAL DELIBERATE
INDIFFERENCE AS A DIABETIC BECAUSE
HIS SUGAR LEVEL WOULD BOTTOM OUT
AND HE HAD TO BE PROVIDED
EMERGENCY MEDICAL ATTENTION
ON NUMEROUS OCCASIONS. WHILE
IN SHU. THE PLAINTIFF ON OR
ABOUT APRIL 7 2013 NEARLY DIED
WHILE IN SHU. IN THE EARLY AM
HOURS CALLED FOR THE DEPUTY
SHERIFF BECAUSE HIS SUGAR
LEVEL HAD WENT TOO LOW. BUT
THE DEPUTY SHERIFF NEVER
ANSWERED. WHEN THE PLAINTIFF
AWAKENED HE WAS BEING
TREATED BY MEDICAL.
(SEE EXHIBIT B)

20 DURING THE PERIOD OF NOV. 19 2011
UP UNTIL FEB 10 2013 PLAINTIFF
WAS ALLOWED TO PURCHASE FOOD
ITEMS FROM COMMISSARY PROGRAM.
AS INMATES WERE SUBMITTING
COMMISSARY PURCHASE ORDERS
THROUGH COMMISSARY PAPER SHEETS,

HOWEVER, ON OR ABOUT FEB 13 2013,
THE ECHC HAD INSTALLED THE
KEEFE KIOSK TOUCH - SCREEN
EQUIPMENT DEVICE. IT WAS THEN
THE DEFENDANTS LAMY, SULLIVAN,
HOWARD , WHIPPERMAN, DIINA,
KEEFE KIOSK ET. AL ALONG
WITH THE HEALTH DEPT. OF
MEDICAL, DEFENDANT NURSE
PRACTITIONERS SHARON AND JANET
AGGED IN COLUSION WITH
IMPLEMENTING A DISCRIMINATORY
POLICY THAT DISCRIMINATED
AGAINST DIABETIC AND PRECLUDED
THE PLAINTIFF FROM PURCHASING FOOD
FROM COMMISSARY PROGRAM .
(SEE EXHIBIT C)

21. ON OR ABOUT OCT. 6 2013, THE
DEFENDANT DEPUTY SHERIFF BROWN
RETALIATED AGAINST PLAINTIFF
BECAUSE PLAINTIFF FILED GRIEVANCES
AGAINST BROWN, ISSUED THE
PLAINTIFF FABRICATED MISBEHAVIOR
REPORT.
(SEE EXHIBIT D)
22. ON OR ABOUT APRIL 23 2014 THE
PLAINTIFF WITH ASSISTANCE FROM A
SPANISH SPEAKING INMATE FILED A

GRIEVANCE AGAINST E.C. SHERIFFS
OFFICE, ECHC EMPLOYEES AND
MEDICAL DEPT. EMPLOYEES FOR
DISCRIMINATING AGAINST THE
PLAINTIFF AND IMPLEMENTING POLICIES
THAT DISCRIMINATED AGAINST THE
PLAINTIFF THUS EXCLUDING PLAINTIFF
FROM FULL PARTICIPATION IN THE
KEEFE COMMISSARY PROGRAM.

23. THE DEFENDANT GRIEVANCE COORDINATOR
SGT. MCANDREW DENIED PLAINTIFFS
GRIEVANCE AND REFUSED TO PROCESS
SUCH SAID GRIEVANCE ALLEGING
THAT INMATES CANNOT GRIEVE MEDICAL
OR SITUATIONS THAT WOULD THE
MEDICAL DEPT.
(SEE EXHIBIT E)

24. ON MAY 1st 2014 THE DEFENDANT
SGT. MCANDREW ON FOX SOUTH STATED
TO THE PLAINTIFF "THE POLICY ON
PG. 14 IS MEDICALS DOING, THE
SHERIFF'S OFFICE CANNOT SUPERCEDE
MEDICAL."

25. DEFENDANT LOUGHREN HAS A CUSTOM POLICY IN
PRACTICE OF FAILING TO INVESTIGATE INMATES GRIEVANCES AND
CONDUCTING INVESTIGATIONS. LOUGHREN FAILED TO
BE IMPOUNDED. (SEE EXHIBIT F)

SUMMARY OF RELIEF SOUGHT

1. THE DEFENDANTS BE ORDERED BY THE COURT TO COMPENSATE PLAINTIFF IN THE AMOUNT OF ONE MILLION DOLLARS.
2. THE DEFENDANTS BE ORDERED BY THIS COURT TO PAY THE PLAINTIFF PUNITIVE DAMAGES IN THE AMOUNT OF TWO MILLION DOLLARS.
3. THE DEFENDANTS BE ORDERED TO PUT IN PLACE A SPANISH/BILINGUAL PROGRAM FOR INMATES WHO DO NOT SPEAK ENGLISH.
4. THE DEFENDANTS BE ORDERED BY THIS COURT TO RECORD ALL DISCIPLINARY HEARINGS AND TRANSCRIBE WRITTEN DISCIPLINARY NOTICES FROM ENGLISH TO SPANISH.
5. THE DEFENDANTS BE ORDERED BY THIS COURT TO PROVIDE TRANSLATION OF LEGAL MATERIALS, CASE LAW, LAW BOOKS AND TRANSLATION FROM ENGLISH TO SPANISH ON THE LEGAL RESEARCH PROGRAM THOMAS REUTER PREMISE FOUR.

6. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DIETICIAN FOR DIABETIC MENUS.
7. THE DEFENDANTS BE ORDERED BY THIS COURT TO REFRAIN FROM DISCRIMINATING AGAINST THE PLAINTIFF AND ALLOW FULL PARTICIPATION AND RECEIPT OF BENEFITS IN ALL PROGRAMS, SERVICES AND ACTIVITIES WITHIN A PUBLIC ENTITY.
8. THE DEFENDANTS BE ORDERED BY THIS COURT TO TAKE SENSITIVITY TRAINING AND LEARN HOW TO INTERACT WITH DISABLED PERSONS.
9. THE DEFENDANTS BE ORDERED BY THIS COURT TO IMPLEMENT AN ADEQUATE GRIEVANCE PROGRAM WHICH REMAINS IMPARTIAL AND PROCESSES ALL INMATES GRIEVANCES WITH A GRIEVANCE COMMITTEE PANEL.
10. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DOCTOR THAT WILL NOT COMPROMISE HEALTH AND WELL BEING

OF INMATES

11. THAT DEFENDANTS BE ORDERED TO
IMPLEMENT A SPANISH TRANSLATION OF
THE REFFF COMMISSARY RECEIPTS.

(EX A)

Ex A

ERIE COUNTY SHERIFF'S OFFICE – JAIL MANAGEMENT DIVISION
DISCIPLINARY REPORT

Inmate Name	ICN#	H.U. #	Date of Report
MONTALVO Misael	131327	1028-3	2-11-13
Location of Offense	Date/Time of Offense	Incident #	Reporting Officer
FOX NORTH	11/13 1000		DIAZ
CHARGE#	OFFENSE		CLASS
104-1B	CONTINUOUSLY BY A-1000 INDULGED IN SEMI-NUDITY.		A
104-C	DISINTEGRATING ATTIRE SIGHTS (EX: IN BATH)		B
105-C	CALIF. STATEMENT: AND THAT IT FURTHER STATES FALSE		C

NARRATIVE

ON THIS DATE FEBRUARY 16, 2013 AT APPROXIMATELY 1000hrs ON FOR DEPTH
THIS DEP WAS COLLECTED BYERS, TANAKA, AR-3 Maintained visual viewed in
A CAGE THAT LOOKS A LITTLE DIFFERENT. I HAD FURTHER INVESTIGATIONAL THIS
DEP BOARDED THE PLASTIC OFF AND FOUND THE ARMED HARPOON HAD BEEN
REPLACED WITH A SIGHT SET TO LOOK LIKE A HARPOON. THIS DEP THEN TURNED BACK TO THE
HARBOR WITH NO HARPOON. NOT AFTER SEEING THIS AND RESPONDING THEM
REPORTED THAT A TOTAL OF EIGHT (8) SEARCHES WERE MADE WITH THIS DEP AND
VOLUNTEER AND COAST GUARD MEMBERS FROM THE HARBOUR GUARD AND MARITIME
SEARCH AND RESCUE TEAM. AFTER FURTHER INVESTIGATION, THE DEP ADVISED
THE DEPARTMENT OF DEFENSE THAT THIS DEP IS NOT MAINTAINED OR OPERATED BY THE DEPARTMENT
OF DEFENSE AND THAT IT HAS BEEN REMOVED AND NOT PLACED
IN THE HARBOUR SINCE 2004.

**Under penalty of perjury, I attest that the above
Statements are true to the best of my knowledge and belief.**

Inmate's Receipt	Signature of reporting Officer	Badge #	Date
I have been advised of my rights with regard to the disciplinary process and have been provided with a written copy of the disciplinary charges filed against me.			
Inmate's signature _____	Date _____		
<input type="checkbox"/> Inmate refused to sign receipt _____		Inmate's Signature _____	Date _____
Witness signature _____			
Waiver			
I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee			

SUPERVISOR'S REVIEW

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

Forward to the Disciplinary Committee

Signature of Reviewing Supervisor

Page

NOTIFICATION OF INMATE'S RIGHTS

- You will be given an opportunity to be heard in your own behalf.
- You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- You will receive written notice of the decision of the Disciplinary Committee.
- You may appeal the decision of the Disciplinary Committee, in writing within 2 business days, to the Chief of Operations.
- If you refuse to attend your Disciplinary Hearing, the hearing will be held without you being present. Your refusal to attend may result in the forfeiture of your right to appeal the Committee's decision. (Watson V. Coughlin 517 N.Y.S.2d 620 [A.D. 1987])

(Ex B)

EX B

**ERIE COUNTY HOLDING CENTER
DISCIPLINARY HEARING RECORD**

Inmate Name	ICN#	Housing Unit #	Date of Report		
MONTALVO MISAEL	131327	FNDR 28-3	2-16-13		
Location of Offense	Date / Time of Offense	Incident #	Reporting Officer		
FOX NORTH	2-16-13 1000		DRIZEL		
<input checked="" type="checkbox"/> Defendant Present at Hearing	Charges	Class	Inmate's Plea	Findings	
<input type="checkbox"/> Defendant Refused to Attend	104 - A	A	G	NG	G NG
<input checked="" type="checkbox"/> <i>M. Montalvo</i> (Inmate's Signature)	106 - B	B	G	NG	G NG
	109 - C	C	G	NG	G NG
NOTES			G	NG	G NG
			G	NG	G NG
			G	NG	G NG
			G	NG	G NG

INMATE'S STATEMENT:

I Admit ~~that~~ I took the Razor, I Know ~~that~~ I was ~~wrong~~. This is the last Problem that you will have ~~from me~~.

The finding of INNOCENCE / GUILT is based upon the following credible evidence presented at the hearing:	SANCTIONS IMPOSED:
<input type="checkbox"/> Officer's direct observations. <input type="checkbox"/> Inmate's statement(s). <input type="checkbox"/> Review of INCIDENT REPORT J-28. <input type="checkbox"/> Review of physical evidence. <input type="checkbox"/> Witness statement(s). <input type="checkbox"/> Other _____	<input type="checkbox"/> Time Served <input type="checkbox"/> Verbal reprimand <input type="checkbox"/> Probation: _____ days; _____ days KLP if violated <input type="checkbox"/> Restitution: \$ _____ payable from existing/future funds <input checked="" type="checkbox"/> Loss of privilege(s): <u>KL</u> for <u>180</u> days <input type="checkbox"/> Disciplinary Segregation: _____ days <input type="checkbox"/> Recommend Admin. Action: _____

Sanctions to run for a period of 180 days, From 2/16/13 to 3/14/13

You will be returned to general population on 3/14/13 at 6:30 p.m.

DISCIPLINARY COMMITTEE DAY: _____ DATE: _____ TIME: _____

S. P. Rosel
Disciplinary Committee Signature

L. L. L.
Disciplinary Committee Signature

L. L. L.
Disciplinary Committee Signature

(EX C)

P. O. BOX 840100
KANSAS CITY, MO 64184-0100

ORDER DATE: 06/06/13
ORDER NBR: 06/06/13
CPR NBR: 06/06/13
BEG FUND BAL: \$4.26
PAGE: 1

Excl

NAME: MONTALVO MISAEI

NBR: 131327

BLOCK: ECHO TIER: G CELL: EA

SITE: ERIE CO CORRECTIONAL FACILITY # 27743J-001

BEG FUND BAL:

PAGE:

ORDER	SITE:	ITEM#	ITEM	ITEM	ITEM	TOTAL
1	0147	622336	F-UP A/P DRIVE	ITEM	PRICE	PRICE
1	0398	28933	DIAL TRANSLU	ITEM	PRICE	PRICE
1	1060	38235	8.5 X 11 LET	ITEM	PRICE	PRICE
-1	1094	38246	THIRTY-THREE	ITEM	PRICE	PRICE
10	2100	901445	H/S SB ORANG	ITEM	PRICE	PRICE

Secure Items

5	1001	8983	LARGE STAMPE	ENVELOPE	ITEM	PRICE	PRICE
						SUB-TOTAL	10.60
						SALES TAX	.47
						TOTAL	11.07
						END BALANCE	\$4.26

LIST SHORTAGES AND/OR DAMAGES HERE:

ITEM# QUANTITY DESCRIPTION

✓

~~MISAEI MONTALVO~~

SIGNED

Misaei Montalvo

DATE

2/22/13

WITNESSED BY

DATE

2/22/13

(EX D)

EX D

ERIE COUNTY SHERIFF'S OFFICE



JAIL MANAGEMENT DIVISION

10/10/2013

TO: Montalvo, Misael 12127

FSO 81

RE: Grievance 13G-156

Please read the decision of the Chief Administrative Officer

Please check that you have read his decision, Then;

Check;

I agree to accept the decision, or:

I wish to appeal to the Citizen's Policy and Complaint Review Council

Sign the form.

Then you must return the form within business two days by 10/14/2013 or
the grievance will be closed.

Thank you,

Chief A. Harris

Chief Administrative Officer

EX P

early 6/10
EP W/holdings

New York State Commission of Correction



Grievance Form Part I

Facility: Erie County Sheriff's Office—Jail Management Div.
 Holding Center NY014023C 1403
 Correctional Facility NY014013C 1402
 Yankee Compound NY011043C 1410

Housing Location: fx South
 Grievance #: 136-156 #81
FACILITY ASSIGNS THIS NUMBER

Inmate's Name: MONTALVO Misael

ICN #: 131387

Brief Description of the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached ()

We were told to lock in by Deputy Brown #1286 on Sept 30th for noise. The pod was quiet all night, there is 50 people in our unit and never have a problem until he walks. He refused me a grievance and said if I want one he will put me in the box. He threatened the pod and at one point got into a inmates face with threats to physically harm him. Brings verbal abuse. Brings tension to an environment that's never had or caused a serious problem.

Action Requested by the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached ()

He should be under review for his temper towards inmates. Also the facility should have counseling for violent C.O'S / Deputies.

He should not be allowed to work in the pods with all his personal problems.

Grievant Signature: Misael Montalvo

Date/Time Submitted: Sept 30 2013

Receiving Staff Signature: J. L. 1393

Date/Time Submitted: 9/30/13 1536

Summary of Facility Staff attempts to resolve (Attach Relevant Documentation):

Number of Additional Sheets Attached ()

unable to receive unit 110 due to excessive noise for SGT Balis

Language Barrier, List language _____ : Name of Interpreter and affiliation _____
 Cognitive Disability Barrier, Low literacy If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature: D-9L# 1393

Date/Time: 9/30/13

() I agree to accept the informal resolution to my Grievance

I do not agree to accept the informal resolution to my Grievance

Grievant Signature: Misael Montalvo

Date/Time Submitted: 9/30/13

Forward to the Grievance Coordinator:

Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: J. L. Plymouth

Date/Time: 9/30/13 2110

Received by the Grievance Coordinator:

Grievance Coordinator Signature: Sgt FRANKLIN

Date/Time: 10/1/13 00700

EX-D

**ERIE COUNTY HOLDING CENTER
DISCIPLINARY HEARING RECORD**

Inmate Name	ICN#	Housing Unit / #	Date of Report		
Montalvo M Miseal	131327	B-SH 44	10/6/13		
Location of Offense	Date / Time of Offense	Incident #	Reporting Officer		
F-22 Common Area	10/6/13 2200		Brown		
<input type="checkbox"/> Defendant Present at Hearing	Charges	Class	Inmate's Plea	Findings	
<input type="checkbox"/> Defendant Refused to Attend	106-B	B	G	G	NG
X <i>Montalvo</i> (Inmate's Signature)	107-J	C	G	NG	G
	106-G	B	G	NG	G
NOTES	107-I	C	G	NG	G
			G	NG	G
			G	NG	G
			G	NG	G
			G	NG	G

INMATE'S STATEMENT:

I DIDN'T LOCK IN BECAUSE THE WEC REFUSED TO NOTIFY THE SGT, AND I WANTED TO PLEAD OUT CASE.

The finding of INNOCENCE / GUILT is based upon the following credible evidence presented at the hearing:	SANCTIONS IMPOSED:
<input checked="" type="checkbox"/> Officer's direct observations. <input checked="" type="checkbox"/> Inmate's statement(s). <input type="checkbox"/> Review of INCIDENT REPORT J-28. <input type="checkbox"/> Review of physical evidence. <input type="checkbox"/> Witness statement(s). <input type="checkbox"/> Other _____	<input type="checkbox"/> Time Served <input type="checkbox"/> Verbal reprimand <input checked="" type="checkbox"/> Probation: <u>10</u> days; <u>5</u> days KLP if violated <input type="checkbox"/> Restitution: \$ _____ payable from existing/future funds <input type="checkbox"/> Loss of privilege(s): _____ for _____ days <input type="checkbox"/> Disciplinary Segregation: _____ days <input type="checkbox"/> Recommend Admin. Action: _____

Sanctions to run for a period of 10 days, From 10/7/13 to 10/17/13.

You will be returned to general population on _____ at 6:30 p.m.

DISCIPLINARY COMMITTEE	DAY: <u>WED</u>	DATE: <u>10/17/13</u>	TIME: <u>0900</u>
<i>Montalvo</i>			
Disciplinary Committee Signature	Disciplinary Committee Signature	Disciplinary Committee Signature	

RXD

ERIE COUNTY SHERIFF'S OFFICE • JAIL MANAGEMENT DIVISION

DISCIPLINARY REPORT

Inmate Name	ICN#	H.U. #	Date & Time of Report		
Montalvo, Misael	131357	Locksmith-51	10-6-13		
Location of Offense	Date/Time of Offense	Incident #	In Date	Out Date	
Locksmith - Common Area	10-6-13 11:45				
CHARGE#	OFFENSE				CLASS
105-B	Dishonest Conduct - which results in a threat to safety Second or third order of Facility				B
107-T	Failure to immediately obey and defer to one or more staff member				C
106-T	Making unreasonable noise				C
106-G	Harassment / obscene language / gestures				B

NARRATIVE

On above date, approx time this deputy gave inmate number (131357) a direct order to STOP talk to them. They found him on the 2nd floor to have 1st floor. This inmate goes to 2nd floor direct orders before inmate comes down. They in hallway came up to 2nd floor. They say "Don't let me talk to you I want talk to Sgt 11". The reason can't be for this he's been doing same "talking to him" on 2nd floor for 10 days. He's going to do it again. So he went to 2nd floor and make shot twice. Inmate afraid he's going to get hit. So he begin to run. Inmate direct order to stop going to 2nd floor. Tellech inmate can't. No further incident at this time Sgt 11 end of report **10-6-13**

(DO NOT)

Under penalty of perjury, I attest that the above Statements are true to the best of my knowledge and belief:

[Signature] Signature of reporting Officer

Badge #

Date

Inmate's Receipt	Waiver
I have been advised of, and provided with a written copy of the disciplinary charges filed against me. <i>X RE FORA 11/13</i>	I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee.
Inmate's Signature _____ Date _____	Inmate's Signature _____ Date _____
<input checked="" type="checkbox"/> Inmate refused to sign receipt _____ Signature of Employee & Title _____	Signature of Employee & Title _____

SUPERVISOR'S REVIEW

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

Forward to the Disciplinary Committee
 File

Set five Signature of Reviewing Supervisor

10-7-13 Date

NOTIFICATION OF INMATE'S RIGHTS

- You will be given an opportunity to be heard in your own behalf.
- You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- You will receive written notice of the decision of the Disciplinary Committee.
- You may appeal the decision of the Disciplinary Committee, in writing within two (2) business days, to the Superintendent or Designee.
- If any good time is revoked; on or about ten (10) days prior to your minimum outdate, you may apply to the Disciplinary Committee for restoration of lost good time.

(EX E)

ERIE COUNTY SHERIFF'S OFFICE



JAIL MANAGEMENT DIVISION

4/29/2014

TO: Montalvo, Misael 131327 F SO 81

RE: Grievance 14RG-164 Date Grievance Submitted: 4/26/2014

I have received and reviewed your Inmate Grievance dated 4/26/2014

Pursuant to 9NYCRR7032.4(h) Program Requirements:

Grievances regarding issues that are outside the authority of the chief administrative officer to control are not grievable and may be returned to the inmate by the grievance coordinator. Such grievances may not be appealed to the chief administrative officer or the Citizens' Policy and Complaint Review Council.

A Health Care Professional determines all medical actions related to your health care plan. This may include, but is not limited to: any treatments, diets, medications, medication dosages, decisions related to hospitalization and consultations to any outside health care professional. Medical related actions are outside the authority of the Chief Administrative Officer.

Therefore, this shall serve to inform you that your grievance dated 4/26/2014 cannot be processed and is being returned to you. This grievance may not be appealed to the Chief Administrative Officer or to the Citizens' Policy and Complaint Review Council.

Thank you.

Sgt. McAndrew

Grievance Coordinator

CC: Grievance File



RE' LACK OF
DISCRIMINATORY
COMMISSARY
ITEMS.

New York State Commission of Correction

EX E

Grievance Form Part I

Facility: Erie County Sheriff's Office—Jail Management Div.
 Holding Center NY014023C 1403
 Correctional Facility NY014013C 1403
 Yankee Compound NY011043C 1410

Housing Location: Fox South

Grievance #: 1426-1164

FACILITY ASSISTED THIS NUMBER

Inmate's Name: Misael Montalvo

ICN #: 131327

Brief Description of the Grievance (Completed by the Grievor):

Number of Additional Sheets Attached (4)

INMATE STATES SEE 4 PGS OF STATEMENT OF FACTS ATTACHED

Action Requested by the Grievor (Completed by the Grievor):

Number of Additional Sheets Attached ()

- I AM REQUESTING TO BE ALLOWED TO PURCHASE COMMISSARY FOOD ITEMS
- I AM REQUESTING THAT ECHC OFFICIALS REFRAIN FROM COMMITTING ANY FURTHER DISCRIMINATION AGAINST ME

Grievor Signature: Misael Montalvo

Date/Time Submitted: 4-26-14

Receiving Staff Signature: V. C. 1302

Date/Time Submitted: 4/26/14 1:34:01 p.m.

Signature of Facility Staff Member to Review (Attach Review Documentation):

Number of Additional Sheets Attached (4)

THERE IS NOTHING THIS D.P.L.C. CAN DO REGARDING
COMMISSARY CHOICES FOR Diabetics.

3 Language Barrier, List language _____; Name of Interpreter _____

2 Cognitive Disability Barrier, Low literacy; If box is checked, what steps were taken to assist grievor? (List above)

Officer/Supervisor Signature:

Date/Time:

() I agree to accept the informal resolution to my Grievance

→ I do not agree to accept the informal resolution to my Grievance

Grievor Signature: Misael Montalvo

Date/Time Submitted: 4/26/14 4:14 p.m.

Forward to the Grievance Coordinator: Grievances must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature:

Date/Time:

Reviewed by the Grievance Coordinator:

Grievance Coordinator Signature: D. M. M. R. W.

Date/Time: 4/28/14 9:46 a.m.

EX E

MICHAEL MONTAGUE
ECHC
40 DELAWARE AVE
BUFFALO NY 14202

GRIEVANCE COORDINATOR

ECHC
40 DELAWARE AVE.
BUFFALO NY 14202

APRIL 26 2014

1. WHEREAS ECHC IS A PUBLIC ENTITY WITH FIFTY OR MORE EMPLOYEES, AND AS SUCH, ECHC IS SUPPOSED TO COORDINATE IT'S EFFORTS TO COMPLY WITH TITLE II OF THE ADA AND SUBSECTION 504 OF THE REHABILITATION ACT.
2. THE FEDERAL DISABILITIES ACT STATES TITLE II OF THE PUBLIC ENTITY SECTION PROVIDES THAT, "NO QUALIFIED INDIVIDUAL WITH A DISABILITY BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY OR BE SUBJECT TO DISCRIMINATION BY ANY SUCH ENTITY." SECTION 504 OF THE REHABILITATION ACT RONSE v. PLANTIER 997 F. SUP. 575-582 (D.N.J 1998) (EVIDENCE THAT BY FAILING TO TREAT THEIR DIABETES, THE DEFENDANTS EXCLUDED PRISONERS FROM PARTICIPATION IN SOME PROGRAMS DURATED

EX E

A LITIGANT UNDER THE ADA) VACATED OR OTHER
REASONS 182 F.3d 1912
3rd CIRCUIT (1993) GRILLO v. HOLY FAMILY
HEALTH PLUS (3 F. SUPP. 2ND 737, 746
(N.D.I. 11 1993) (INSULIN DEPENDANT DIABETES
IN ITS UNREATED FORM "MEETS ALL THE PRONGS"
OF THE ADA'S DISABILITY DEFINITION)
PROVIDES THAT NO OTHERWISE QUALIFIED
INDIVIDUAL WITH A DISABILITY IN THE UNITED
STATES SHALL SURELY BY REASON OF HIS OR
HER DISABILITY BE EXCLUDED FROM THE
PARTICIPATION OR BE DENIED THE BENEFITS OF
OR BE SUBJECT TO DISCRIMINATION UNDER
ANY PROGRAMS OR ACTIVITIES RECEIVING
FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY
PROGRAM OR ACTIVITY CONDUCTED BY ANY
EXECUTIVE AGENCY . (EACH D.O.C) THIS MEANS
THAT ANY AGENCY INCLUDING THE D.O.C SHERIFF'S
OFFICE ETC . THAT RECEIVES ANY FEDERAL
FUNDING IS COVERED BY THE REHABILITATION ACT
FOR ALL OF ITS SERVICES PROGRAMS AND ACTIVITIES
FEDERAL AGENCIES AND PRISONS ARE NOT SUBJECT TO
THE ADA BUT THEY ARE SUBJECT TO THE
REHABILITATION ACT. DEPARTMENT OF JUSTICE
REGULATIONS (APPLIED) UNDER THE STATUTES ARE
APPLICABLE TO ALL PRISONS AND JAILS.

EX E

3. IN ADDITION, I AM QUALIFIED WITH A KNOWN DISABILITY (DIABETES) WITH SUCH TERMS IS DEFINED UNDER TITLE II OF THE ADA. I HAVE BEEN INCARCERATED AT ECHC AS OF NOV. 19, 2011 AND I HAVE BEEN PURCHASING COMMISSARY UP UNTIL FEB. 2013.
4. MOREOVER, SINCE THE KEEFE COMMISSARY ENTITY HAS TAKEN OVER THE COMMISSARY PROGRAM AT ECHC I HAVE BEEN DISCRIMINATED AGAINST AS A DISABLED PERSON AND DENIED THE BENEFITS OF THE COMMISSARY PROGRAM SUCH AS FOOD ITEMS.
5. WHEREFOR, THE STAFF MANAGEMENT DIVISION INMATE HANDBOOK PG 14 AND THE MEDICAL HEALTH DEPARTMENT WITHIN ECHC HAS IMPLEMENTED A POLICY THAT DIABETES CANNOT PURCHASE ANY FOOD ITEMS FROM COMMISSARY.
6. ALTHOUGH ECHC HAS FAILED TO PROVIDE DIABETICS WITH AN ADEQUATE DIET MENU, DIABETIC INMATES ARE BEING DISCRIMINATED AGAINST, LIMITED AND DENIED EQUAL PARTICIPATION IN THE COMMISSARY PROGRAM.

EX E

7 THE ADA REGULATES THAT COVERED ENTITIES MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST DISABLED PERSONS. A PUBLIC ENTITY MUST MODIFY THOSE POLICIES THAT LIMIT OR DENY DISABLED PERSONS FROM FULL PARTICIPATION IN THEIR PROGRAMS
28 C.F.R. 35 PART 105.

8 THEREFORE, ECHC OFFICIALS AND THE MEDICAL STAFF HAS RECKLESSLY DISREGARDED THE ADA AND REHABILITATION ACT FOR THE SAME PURPOSE OF INFlicting CUSTOMS, POLICIES AND PRACTICES THAT DISCRIMINATINGLY INDIFFERENT TO DIABETIC INMATES.

(EX-1F)



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210-8001
(518) 485-2346
FAX (518) 485-2467

EX F
CHAIRMAN
Thomas A. Beilein

COMMISSIONERS
Phyllis Harrison-Ross, M.D.
Thomas J. Loughren

March 18, 2014

Erie County Sheriff's Office
Sheriff Timothy Howard
10 Delaware Avenue
Buffalo, NY 14202

Re: Grievance # 13-LG-41576 - Facility # 13G-156 Misael Montalvo

Dear Sheriff Howard :

The Citizen's Policy and Complaint Review Council has reviewed the above-referenced grievance at its March 13, 2014 meeting and the Council voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Loughren".

Thomas J. Loughren
Commissioner

cc: Grievance Coordinator
Misael Montalvo